IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 28156 of 2007(S)

OA.600/2006 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. CHIEF PERSONNEL OFFICER,
RAIL WHEEL FACTORY, MINISTRY OF RAILWAYS,
YELAHANKA, BANGALORE.

2. THE GENERAL MANAGER,
RAIL WHEEL FACTORY, MINISTRY OF RAILWAYS,
OFFICE OF THE GENERAL MANAGER, PERSONNEL
DEPARTMENT, YELAHANKA, BANGALORE.

3. FINANCIAL ADVISER & CHIEF ACCOUNTS
OFFICER, OFFICE OF THE FA & CAO (PENSION),
SOUTHERN RAILWAY HEADQUARTERS, PARK TOWN, CHENNAI.

4. UNION OF INDIA, REPRESENTED BY
THE GENERAL MANAGER, SOUTHERN RAILWAY,
CHENNAI.

BY ADV. SRI.VARGHESE P.THOMAS, SR.SC,RAILWAYS

RESPONDENTS:

S.SANTHOSH, S/O. R.SANKARA WARIER,
(SENIOR CLERK - COMPULSORILY RETD.),
SREE VILAS, CHANGANKULANGARA, VAVVAKKAVU P.O.,
KOLLAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.28156 of 2007-S

Judgment

Balakrishnan Nair, J.

The petitioners are the respondents in OA No.600/06. The respondent herein filed the said OA, a copy of which is produced as Ext.P1, claiming inter alia, payment of pension to him as a disabled person, discharged from the Railway Service, due to illness. Owing to illness, he was remaining unauthorisedly absent. He was a psychiatric patient also. For the unauthorised absence, proceedings were initiated against him and he was finally, dismissed from service. His mother appealed, making a plea that the punishment may be modified as a compulsory retirement from service. The respondent filed a cryptic appeal in which he prayed that he may be considered for compulsory retirement on medical ground with pensionary benefits. The appellate authority considered the appeal and by order dated 16.12.2002, converted the penalty of removal from service into one of compulsory retirement under Rule 64 of the Railway Services (Pension) Rules, 1993. He was paid pension and gratuity.

Against the said decision of the appellate authority, the respondent filed a revision petition on 13.02.2003. The said revision was rejected by order dated 15.03.2003, which is produced as Annexure A11 to Ext.P1 OA. The relevant portion of the said order reads as follows :

> "I have carefully considered your above cited revision petition against the background of facts on record, your past performance etc.
>
> You have been imposed with several penalties in the past for remaining unauthorisedly absent. Appellate Authority (viz CWE/G) has already shown sympathy in your case and reduced the penalty from "removal" to "compulsory retirement", apparently due to your ill-health. Since the pensionary benefits in real terms are not going to be affected and you have not brought out any new point in your revision petition, the decision taken by Appellate Authority is upheld".

In the above factual background, the petitioner approached the CAT, claiming pensionary benefits, treating him as a person, discharged from the Railways, owing to illness. The CAT disposed of the application, with the following directions :

> "In view of the above, Original Application is disposed of with the direction to the respondents to calculate the extent of pension payable under two different stages and in case both are identical, the applicant be so informed and if disability pension happens to be more, his pension may be accordingly revised. This order is passed as the rejection of applicant's request for the same was on the premises that there would be no difference in the quantum of pension payable to the applicant".

2. The respondents in the OA have filed the present Writ Petition. According to them, since the respondent herein, the applicant before the CAT, has received all the benefits under the order, treating his retirement from

service as compulsory retirement by way of punishment, he cannot now turn round and claim better benefits. The CAT noticed that the revisional authority, which is the highest authority, dealing with the disciplinary proceedings, proceeded on the footing that the benefits available to him on retirement on medical grounds and on compulsory retirement as punishment are the same. Therefore, the CAT ordered to work out the benefits under both the schemes and to pay him, whichever is beneficial to him. In view of the stand of the revisional authority in Annexure A11 order, we find nothing illegal or improper with the order of the CAT, warranting interference. The learned counsel for the petitioners submitted that there is considerable delay in filing the OA and therefore, it was barred by limitation. We notice that no such ground was considered by the CAT. That means, no such ground was urged before it. Therefore, it is not proper for this Court to consider the same in this Writ

Petition. Accordingly, the Writ Petition fails and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

24.09.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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